

#### REMARKS/ARGUMENTS

The Office Action of August 14, 2009, has been carefully reviewed. Claims 16 and 17 have been amended. Claims 2-19, 21-23 and 25-37 are presently pending, with claims 16, 17, 18, 19, 21, 22 and 34-37 being the independent claims. Reconsideration is respectfully requested.

Support for the amendment to claims 16 and 17 can be found, for example, in paragraphs [0101] and [0102] of the originally-filed specification.

#### *Claim Rejections – 35 USC § 101*

Claims 2-17, 23 and 25-33 were rejected under 35 USC § 101 for not being directed to patentable-subject matter.

While not conceding the correctness of the § 101 rejection, Applicants have amended independent claims 16 and 17 to each recite transmitting and receiving by an apparatus to expedite prosecution of the present application. The remaining claims rejected under 35 USC § 101 depend from claim 16 or 17. Therefore, Applicants respectfully request that the § 101 rejection of claims 2-17, 23 and 25-33 be withdrawn.

#### *Claim Rejections – 35 USC § 103*

Claims 17, 19 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj (U. S. Patent No. 6,807,426) in view of Malmlof (U. S. Patent No. 6,594,241). Claims 2-15, 35 and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pankaj and Malmlof as applied to claims 17, 19 and 21 above, and further in view of Chen (U.S. Patent Application Publication No. 2003/007466). Reconsideration and withdrawal of these rejections are respectfully requested.

Claim 17 is directed to a method of transmitting data. The method comprises transmitting, by an apparatus, a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, receiving, by the apparatus, a rate assignment responsive to the request for the rate, the rate assignment indicating a scheduled duration and a scheduled rate applicable for the scheduled duration, and transmitting data, the transmitting responsive to the rate assignment, wherein the data is transmitted for the scheduled duration at the scheduled rate. Applicants submit that Pankaj and

Malmlof, taken alone or in combination, fail to disclose the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17.

Pankaj is not seen to disclose the access terminal 122 transmitting its data request based on whether all three of the conditions recited in claim 17 are met: data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested. Therefore, Pankaj is not seen to disclose the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17.

The Office Action cited col. 6, lines 19-20 and col. 6, line 32 of Pankaj as allegedly disclosing transmitting a request for a rate if data arrives in a buffer and data in the buffer exceeds a buffer depth. See page 5 of the Office Action. Applicants respectfully disagree. Col. 6, lines 16-21 of Pankaj discloses "[t]he channel scheduler 812 determines the length of a service interval during which data is to be transmitted to any particular remote station based upon the remote station's associated instantaneous rate for receiving data (as indicated in the most recently received DRC signal)." This portion of Pankaj does not mention a buffer. Col. 6, lines 32-33 of Pankaj discloses that the "channel scheduler 812 selects the particular data queue for transmission." The data queue in this portion of Pankaj refers to the data queue 830 of the base station 820, as indicated by the immediately following sentence in col. 6, lines 33-35 and Figure 7. The data queue 830 stores data for transmission to the remote station associated with the data queue 830. See col. 6, lines 33-36. Pankaj does not disclose the access terminal 126 using the amount of data in the data queue 830 of the base station 820 as a condition for whether to transmit its data request.

Therefore, Pankaj is not seen to disclose the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17. Malmlof is not seen to cure the above deficiencies of Pankaj for at least the reasons given below.

Malmlof discloses a system for controlling switching between different channel types. See col. 1, lines 14-26 of Malmlof. Malmlof also discloses determining when to switch a user connection from a dedicated channel to a common channel by monitoring the amount of data in a transmission buffer associated with the user connection. See col. 2, lines 58-61 of Malmlof.

The Office Action cited col. 2, lines 59-61 of Malmlof as disclosing "the data in the buffer exceeds a buffer depth." See page 6 of Office Action. As discussed above, Malmlof monitors the transmission buffer for channel switching to determine when to switch a user connection between different connection types (dedicate channel or common channel). Malmlof does not teach or suggest using the amount of data in the transmission buffer as a condition for determining whether to transmit a request for a rate. Therefore, Applicants submit that it would not have been obvious to combine Pankaj and Malmlof to arrive at the feature of transmitting a request for a rate if data arrives in a buffer, data in the buffer exceeds a buffer depth, and sufficient power exists to transmit at the rate requested, as recited in claim 17.

For at least the reasons given above, Applicants submit that independent claim 17 is patentable over the applied applications, and respectfully request that the rejection of claim 17 be withdrawn.

Independent claims 19, 21, 35 and 37, which include features similar to those of claim 17, are also patentable over the applied references for at least the reasons given above for claim 17.

The other claims currently under consideration in the application are dependent from the independent claims discussed above and therefore are believed to be allowable over the applied references for at least the same reasons. Because each dependent claim is deemed to define an additional aspect of the invention, however, the individual consideration of each on its own merits is respectfully requested.

*Allowable Subject Matter*

Applicants greatly appreciate the Examiner's indication that claims 18, 22, 34 and 36 are allowed.

### CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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By: 

Dang M. Vo, Reg. No. 45,183  
(858) 845-2116

QUALCOMM Incorporated  
Attn: Patent Department  
5775 Morehouse Drive  
San Diego, California 92121-1714  
Telephone: (858) 658-5787  
Facsimile: (858) 658-2502